IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No. 68 of 2005

Date of decision: 7.11.2007

Thakur Dass **…Appellant.**

Versus

State of H.P. **…Respondent.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

The Hon'ble Mr. Justice Surinder Singh, Judge.

Whether approved for reporting?

For the appellant : Mr. G.R. Palsara, Advocate.

For respondent : Mr. Som Dutt Vasudeva, Addl. A.G.

Surjit Singh, Judge(Oral)

The appellant was sent up for trial for an offence punishable under Section 20 of the Narcotic Drugs & Psychotropic Substances Act, hereinafter referred to as Act, for allegedly being in exclusive and conscious possession of one kilogram 'Charas' on 31.10.2003, while traveling by bus No. HP-32/3566, at a place called 'Bajaura'. ASI Rinchan Ghialchen (PW-11) was present at Bajaura along-with some other police officials, when he received information that a person traveling by the aforesaid bus was carrying 'charas' with him. The informant gave description of the person, who was allegedly carrying such 'Charas'. The information was reduced into writing in compliance with the requirement of Section 42(1) of the Act. After some-time the bus reached the spot. It was got stopped. The description of the man carrying the 'charas' as disclosed to ASI Rinchan Ghialchen by the informant, tallied with that of

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Whether reporters of the local papers may be allowed to see the judgment?

the appellant. The aforesaid ASI informed the appellant that it was intended to search his person as he had information that he was carrying 'Charas' and that he had the right to be searched in the presence of a Magistrate or a Gazetted Officer and in case he so desired, search could be arranged in the presence of a Magistrate or a Gazetted Officer, but the appellant opted for being searched on the spot. Search was conducted in the presence of the conductor and the driver of the bus and one kilogram 'charas' was recovered from the appellant on his personal search. Two samples, each of 25 grams, were separated. One sample was sent to the Chemical Examiner along-with NCB. Form. The chemical Examiner opined that the sample contained 29.08% resin of cannabis plant and hence it contained contents of 'Charas'. On receipt of the report, the appellant was sent up for trial.

2. Trial Court charged the appellant with the offence under Section 20 of the Act and on his pleading not guilty, tried him for the said offence. At the end of the trial, the appellant was convicted of the offence under Section 20 of the Act and convicted and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of rupees one lakh; in default of payment of fine to undergo rigorous imprisonment for a further period of four years. The appellant is aggrieved by the judgment of the trial Court and so he has filed this appeal.

3. We have heard the learned counsel for the appellant and gone through the record.

4. First submission made on behalf of the appellant is that as per testimony of PW-5 Chand Prakash, Constable, there were several local residents present on the spot when the information was passed on to ASI Rinchan Ghialchen (PW-11) by the informant, but no local witness was associated at the time of the search of the person of the appellant. It is true that the witness has stated that many persons were present when

the information was passed on, but that does not mean that those persons were available even when the bus reached the spot. In any case, the driver and the conductor of the bus, who also were supposed to be independent witnesses, were associated. Thus, the submission has no merit.

5. Further submission made on behalf of the appellant is that the NCB Form and the specimen impression of the seal were carried in loose envelope along-with the sample parcel of the 'Charas' to the Chemical Examiner, as per testimony of PW-6 Dalip Kumar, Constable and thus there was a chance of tampering with the contents of the sample. The argument has been noticed only to be rejected. The witness did not have the seal with which the sample parcel had been sealed or the specimen impression of which he carried on a piece of cloth and the N.C.B. form in the loose cover and, therefore, there was no chance or opportunity for him to have tampered with the contents of the sample parcel.

6. In the last learned counsel has submitted that the recovered stuff contained 'Charas' only to the extent of 29.08% or say equivalent to the percentage of resin of cannabis and, therefore, the appellant cannot be held guilty of possessing one kilogram 'Charas', but only 29.08% of the recovered stuff. In support of this contention, he has placed reliance upon a judgment of a Division Bench of this Court in **Dharam Pal versus State of H.P. and another appeal [Latest HLJ 2007 (HP) 827].** In the aforesaid case, it has been held that only the resin content of the stuff is 'charas' and that in the absence of the report of the Chemical Examiner about the rest of the contents of the stuff, the quantity of the 'charas, based on the percentage of the resin found therein by the Chemical Examiner, is required to be worked out and the appellant – accused is to

be held responsible for possessing 'charas' only to the extent the stuff contains the resin content in it.

7. As noticed hereinabove, the total quantity of stuff recovered from the appellant was one kilogram. The Chemical Examiner has found resin content in it to the extent of 29.08%. That means the charas / resin content in the recovered stuff was 298 grams. This quantity is less than the commercial quantity, as specified vide Notification No. S.O. 1055(E), dated 19th October, 2001, issued by the Central Government, even though more than the upper limit of the small quantity fixed by the same Notification. Thus, the appellant is liable to be punished under Section 20 (B) of the Act for which no minimum sentence is prescribed. The offence under Section 20 (B) is punishable with imprisonment that may extend to ten years and with fine which may extend to Rs.1,00,000/-. Looking to the quantity of resin / Charas found in the stuff recovered from the appellant, we feel that the ends of justice would be met in case his sentence is reduced from ten years rigorous imprisonment and a fine of Rs.1,00,000/- to three years rigorous imprisonment and a fine of Rs.20,000/-; in default of payment of fine rigorous imprisonment for a further period of six months. We order accordingly.

8. In view of the above, the appeal stands disposed of as partly accepted.

(Surjit Singh), J.

November 7, 2007 (BC) (Surinder Singh), J.